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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF  
SYLVIA GOLUB DECEASED

DR. J.D. GOLUB,  
PLAINTIFF  
----- AGAINST -----

SWAALEY, STERN, N. GOLUB,  
SURROGATE COURT GIGANTE  
ET, AL.,  
JOINTLY AND SEVERALLY LIABLE  
DEFENDANTS  
-----

16 CIV 05386  
(JUDGE R.R. MAUSKOPF)  
  
(MAGISTRATE JUDGE L. BLOOM)

JUDICIAL NOTICE

MOTION TO VACATE  
9.27.2018 DECISION  
F.R.C.P. RULES 59/60 MOTION  
WITH AMENDED COMPLAINT  
AND ATTACHMENTS  
MOTION 12(C) AND 12(D)  
MOTION 55 AND 56

DATED: SERVED ON OR BEFORE OCTOBER 5, 2018  
RETURN DATE: FEDERAL RULES OF CIVIL PROCEDURE  
FILED: NO LATER THAN OCTOBER 5, 2018

JUDICIAL NOTICE OF PROSPECTIVE FILING

RULE 59/60 MOTION TO VACATE THE  
ORDER AND JUDGMENT FILED AND ENTERED ON  
SEPTEMBER 27, 2018 FOR JUST AND MERITORIOUS CAUSE  
AS A PERPETUATION OF CONSTITUTIONAL FRAUD AND VIOLATIONS OF  
SUBSTANTIVE AND PROCEDURAL DUE PROCESS

TO REFILE AND REINSTATE THE UNOPPOSED FEDERAL RULE OF CIVIL  
PROCEDURE RULE 59/60 MOTION (WITH THE AMENDED COMPLAINT)  
ON OR BEFORE OCTOBER 25, 2018 (WITHIN 28 DAYS OF THE  
DATE OF THE DECISION ENTERED ON SEPTEMBER 27, 2018)  
ACCOMPANIED BY A SWORN AFFIDAVIT IN SUPPORT OF  
A FEDERAL RULE OF CIVIL PROCEDURE 12(C) AND 12(D)  
MOTION FOR JUDGMENT ON THE PLEADINGS AND  
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 55  
DEFAULT JUDGMENT AND FEDERAL RULE OF CIVIL PROCEDURE  
56 MOTION FOR SUMMARY JUDGMENT AWARDED ALL RELIEF  
AS REQUESTED IN THE AMENDED COMPLAINT.

Please Take Notice, that for just and good cause, the plaintiff will move the  
USDC-EDNY Court under the federal rules of civil procedure on or before  
October 25, 2018:

- 1) Based on the meritorious grounds that as a matter of federal procedural law, the October 4, 2017 motion accompanied by the amended complaint was unopposed by the defendants, Plaintiff moves and will move to refile and reinstate the motion and the amended complaint for an order and judgment that the USDC-EDNY possessed unrestricted, and unmitigated Federal subject matter jurisdiction and Federal diversity jurisdiction to docket and adjudicate the amended complaint and the pleadings averred therein, supported by the legal argument and statements of undisputed facts as presented in support of this motion. The named NYS Office of Attorney General lawyers representing the Richmond County Surrogate Court, as legal counsel, did not file opposition papers to the 2017 Rule 59-60 Motion and did not answer the amended complaint, because the evidence is overwhelming that the Court violated the fundamental procedural and substantive due process rights to a fair hearing and in fact overtly injured the plaintiff by issuing an unlawful eviction from his residence and domicile at 672 Travis Avenue as retaliation for exercising those fundamental rights to advance the facts and the legal arguments that are fully reflected in the October 4, 2017 motion.

The Richmond County Surrogate Court's failure to undertake fundamental due process is tantamount to a condemnation and a "Defacto Taking"<sup>1</sup> and a fundamental Per Se Fifth Amendment Constitutional violation conferring federal subject matter jurisdiction on the USDC-EDNY, to adjudicate all of the claims.

- 2) Based on the meritorious grounds that the Second Circuit Court of appeals has ruled on a recent decision during the intervening period between October 4, 2017 and September 27, 2018, that the New York State Law of Adverse Possession, provides federal subject matter jurisdiction for the Federal Court. See Jaffer v. Hirji, 887 F.3d 111 (2<sup>nd</sup> Cir. 2018), opinion authored by Circuit Judge Calabresi, (Yale University Law and Economics Dean and Professor<sup>2</sup>) establishing the elements for an adverse possession claim. The plaintiff, DRJDG, has and had satisfied the five elements of the NYS Law of Adverse Possession claim including the requirements of open, actual, notorious, continuous and hostile occupation of the residence for over 25 years adverse to the interests of the defendant Norman

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<sup>1</sup> A de facto taking is a physical taking. As the Court of Appeals stated in City of Buffalo v. J.W. Clement Company, 269 NE2d 895, 902 (NY 1971), "\*\*\*\* the concept of de facto taking has traditionally been limited to situations involving a direct invasion of the condemnee's property or a direct legal restraint of its use [.]'" (Citations omitted.)

<sup>2</sup> Guido Calabresi, The Future of Law and Economics Essays in Reform and Recollection, Yale University Press January 26, 2016 248 pages, 5.5 x 8.25 ISBN: 9780300195897

Golub in an intestate proceeding.<sup>3</sup> The cases cited by Judge Calabresi relate to intrafamily disputes of real property title transfers and the applicability of the law of adverse possession claims in a non-intestate proceeding. This was overtly recognized by defendant Norman Golub who, on multiple occasions during the decedent's lifetime, attempted to obtain a transfer of title to 672 Travis Avenue from the decedent, by will or by direct passage during the actual, open, notorious, continuous and hostile occupancy by the plaintiff. Moreover, defendants have not presented any legal arguments or a rationale justification to claim the creation of constructive trust.

- 3) Notwithstanding the validity of the NYS Law of Adverse Possession claims proffered by the plaintiff, DRJDG, defendants engaged in significant acts of attorney misconduct under 28 Judiciary Law§ 487. After receiving an illegal eviction order, defendant attorneys conspired to dispose of 672 Travis Avenue, the principal residence of the plaintiff during the pendency of the appeal before the NYS Appellate Division Second Department and concealed that fact from the Court and the plaintiff, DRJDG. This is a fact that cannot be refuted by the defendants. Moreover, the defendants intercepted and destroyed DRJDG's appellate briefs that were returned for correction by Clerk Nat Rollerson. All of these allegations cannot be refuted by defendants and are corroborated by NYS APP. DIV. (2<sup>nd</sup> Dept.) Associate Deputy Clerk Darrell Joseph.<sup>4</sup>

<sup>3</sup> The NYS Court of Appeals and the NYS Appellate Division cases have never authored cases that rule against the Petitioner's legal position on the applicability and validity of the Law of Adverse Possession and in fact have ruled in favor of his position See RPAPL §§541 and 901 and See Hogan, as Administrator of the Estate of Ferdinand Powell v. Kelly, 86 A.D.3d 590 (2011) 927 N.Y.S. 2d 157 (App. Div. 2nd dept. 2011), Dickson v. Caruso, 224 NYS 2d 33, (NY Sup. CT. Broome 1961) AND Gali V. Gali 2012 N.Y. Misc. LEXIS 3033; 2012, NY Slip Op 51182U (2012). Galli v. Galli, 117 A.D.3d 679; 985 N.Y.S.2d 273; 2014 N.Y. App. Div. LEXIS 3152; 2014 NY Slip Op. (NYSAD 2nd Div. 2014). See also Bailey and Desiderio, "Application of the Adverse Possession Amendments" New York Law Journal, June 10, 2015, citing Hogan, as Administrator of the Estate of Ferdinand Powell v. Kelly, 86 A.D.3d 590 (2011) 927 N.Y.S. 2d 157 (App. Div. 2nd dept. 2011).

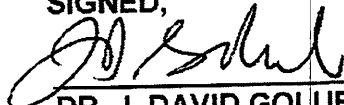
<sup>4</sup> N.Y. JUDICIARY LAW § 487: An attorney or counselor who: 1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or, 2. Willfully delays his client's suit with a view to his own gain; or, willfully receives any money or allowance for or on account of any money which he has not laid out, or becomes answerable for, is guilty of a misdemeanor, and in addition to the punishment prescribed therefore by the penal law, he forfeits to the party injured, treble damages, to be recovered in a civil action. Defendants Swaaley and Norman Golub had a duty to speak and disclose the self-dealing illegal collusive transactions that they had entered into during the pendency of the appeal. SILENCE IS CONCEALMENT AND SUBJECT TO TREBLE DAMAGES.

Under Fed R. Civ Proc. Rule 56<sup>5</sup>, Based on the meritorious grounds that there is no genuine dispute as to any material fact and there is no genuine dispute as to plaintiff's entire original and amended complaint and pleadings averred clearly and unequivocally, establishing that the defendants violated 28 Judiciary Law § 487 by "having engaged in deceit or collusion, or consented to any deceit or collusion, with intent to conceal and deceive the NYS Appellate Division (2<sup>nd</sup> Dept.) and to deceive DRJDG. . . are guilty of misdemeanors, and accordingly, forfeits to the party injured, DRJDG, treble damages, to be recovered in the present civil action, which entirely explains why no opposition has been submitted by the defendants, individually, jointly or severally, as a matter of law which would subject themselves to further penalties of felony/perjury under oath, given the fact that any fictitious statements would directly conflict with the Court transcripts and docket sheet, and, the testimony and knowledge of the Associate Deputy Clerk of the NYS Appellate Division for the Second Department.

Please take further notice that all statements, representations and documents contained and averred in the F.R.CIV. Proc. Rule 59/60 motion accompanied by the amended complaint and supporting documents are true and correct.

The prospective filings will be timely filed and served.

SIGNED,



DR. J. DAVID GOLUB  
ATTORNEY PRO SE

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<sup>5</sup> Motion for Summary Judgment: A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

-----	:	
IN THE MATTER OF	:	16 CIV 05386
SYLVIA GOLUB DECEASED	:	(JUDGE R.R. MAUSKOPF)
	:	
DR. J.D. GOLUB,	:	(MAGISTRATE JUDGE L. BLOOM)
PLAINTIFF	:	F.R.CIV. PROC. 5
----- AGAINST -----	:	AFFIDAVIT OF LEGAL SERVICE
	:	OF PROCESS
	:	
SWAALEY, STERN, N.GOLUB,	:	
SURROGATE COURT GIGANTE	:	JUDICIAL NOTICE: LETTER
ET,AL.,	:	AND JUDICIAL NOTICE OF
JOINTLY AND SEVERALLY LIABLE	:	PROSPECTIVE FILING OF
	:	MOTIONS
DEFENDANTS	:	RULES 59, 60,12(C),12(D), 55, 56
-----	:	

DATED: SERVED ON OR BEFORE OCTOBER 5, 2018  
RETURN DATE: FEDERAL RULES OF CIVIL PROCEDURE  
FILED: NO LATER THAN OCTOBER 5, 2018

Please Take Notice, that pursuant to the Federal Rules of Civil Procedure, on or before, Friday, October 5, 2018, the undersigned deponent filed an original of the letter, as described above, via U.S. First Class to the Clerk of the Court, United States Federal Court Eastern District of New York, 225 Cadman Plaza Room 118 South, Brooklyn, New York, 11201 Attention: Mr. Ralph Vega, USDC-Pro Se Office.

Please Take Notice, that pursuant to the Federal Rules of Civil Procedure, on or before, Friday, October 5, 2018, the undersigned deponent served a copy of the letter, as described above, via U.S. First Class Mail or facsimile or e-mail to each of the following defendants:

Charles F. Sanders, Esq.  
Jonathan Conley, Esq.  
Stephanie Rosenberg, Esq.  
NYS Office of the Attorney General  
120 Broadway  
New York, New York 10271-0332  
(212) 416-8594/8610  
[Charles.sanders@ag.ny.gov](mailto:Charles.sanders@ag.ny.gov)  
[Jonathan.conley@ag.ny.gov](mailto:Jonathan.conley@ag.ny.gov)  
[Stephanie.rosenberg@ag.ny.gov](mailto:Stephanie.rosenberg@ag.ny.gov)

Michael L. Swaaley  
811 Castleton Avenue  
Staten Island, NY 10310  
(718) 227-3100, [Fax (718) 966-0667].  
[mswaaley@gmail.com](mailto:mswaaley@gmail.com)

Jack Stern  
Real Estate Law Expert  
1189 Forest Avenue  
Staten Island, NY 10310  
718.448.6767 [Fax: (718) 448-4509]  
[attorney@jsternlaw.com](mailto:attorney@jsternlaw.com) <http://jsternlaw.com/>

Mr. Ronald M. Cerrachio, Esq.  
Chief Clerk of the Richmond County Surrogate Court  
Surrogate Court, Richmond County  
18 Richmond Terrace  
Staten Island, New York, 10301  
(718) 675-8500, [Fax (718) 390- 8741]

Courtesy copies to:

Mr. Darrell Joseph, Esq.  
Associate Deputy Clerk of the Court  
NYS Supreme Court, Appellate Division – 2ND Department  
45 Monroe Place  
Brooklyn, New York 11201  
(718) 722-6324 (718) 722-6308/19 Fax (212) 401-9114/(212) 419-8457

Lawrence K. Marks, Esq.  
Office of the Deputy Chief Administrative Judge  
Courts within New York City  
2 Empire State Plaza, Agency Bldg. 4, Albany, NY 12223  
25 Beaver St., New York NY, 10004  
(212) 428-2700 (212) 386-5400 [Fax (212) 374-5709]

SIGNED,



DR. J. D. GOLUB  
ATTORNEY PRO SE

DATED: ON OR BEFORE OCTOBER 5, 2018

Xfinity Connect Re\_Fwd\_Activity in Case 1\_16-cv-05386-RRM-LB Golub v\_ Swaaley ... Page 1 of 2

DR. JD GOLUB <drjdg1@comcast.net>

10/4/2018 4:41 PM

**Re: Fwd: Activity in Case 1:16-cv-05386-RRM-LB Golub v. Swaaley et al Order on Motion to Vacate**

To oaglitd@ag.ny.gov • mswaaley@gmail.com Copy charles.sanders@ag.ny.gov • jonathan.conley@ag.ny.gov • stephanie.rosenberg@ag.ny.gov • attorney@jsternlaw.com

To all recipients of this e-mail:

The attached statement of judicial notice and legal argument has been filed with the clerk of the court to be presented to Judges Mauskopf and Bloom.

DR. J.D. GOLUB  
P.O. BOX 131721  
STATEN ISLAND, NEW YORK 10313  
(973) 454-0677

----- Original Message -----

From: [ecf\\_bounces@nyed.uscourts.gov](mailto:ecf_bounces@nyed.uscourts.gov)

To: [nobody@nyed.uscourts.gov](mailto:nobody@nyed.uscourts.gov)

Date: September 27, 2018 at 3:56 PM

Subject: Activity in Case 1:16-cv-05386-RRM-LB Golub v. Swaaley et al Order on Motion to Vacate

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U.S. District Court  
Eastern District of New York

**Notice of Electronic Filing**

The following transaction was entered on 9/27/2018 at 3:56 PM EDT and filed on 9/26/2018

Case Name: Golub v. Swaaley et al  
Case Number: [1:16-cv-05386-RRM-LB](#)

Filer:  
WARNING: CASE CLOSED on 09/06/2017  
Document Number:

22

Xfinity Connect Re\_Fwd\_Activity in Case 1\_16-cv-05386-RRM-LB Golub v\_ Swaaley ... Page 2 of 2

Docket Text:

**MEMORANDUM AND ORDER denying [20] Motion to Vacate: For the reasons set forth in the attached Memorandum and Order, Golub's motion for reconsideration pursuant to Rule 59(e) and Rule 60(b) of the Federal Rules of Civil Procedure is denied, and Golub's request to amend his complaint is denied as futile (Doc. Nos. 19, 20.) Although Golub paid the filing fee to initiate the action, the Court certifies pursuant to 28 U.S.C. § 1915(a) (3) that any appeal from this Order would not be taken in good faith, and therefore, *in forma pauperis* status is denied for purpose of an appeal. The Clerk of Court is respectfully directed to mail a copy of this Memorandum and Order to pro se plaintiff Dr. J. David Golub, and note the mailing on the docket. Ordered by Judge Roslynn R. Mauskopf on 9/26/2018. (Mauskopf, Roslynn)**

1:16-cv-05386-RRM-LB Notice has been electronically mailed to:

Charles Fernando Sanders [charles.sanders@ag.ny.gov](mailto:charles.sanders@ag.ny.gov), [stephanie.rosenberg@ag.ny.gov](mailto:stephanie.rosenberg@ag.ny.gov)

Michael Swaaley [mswaaley@gmail.com](mailto:mswaaley@gmail.com)

Jonathan Conley [jonathan.conley@ag.ny.gov](mailto:jonathan.conley@ag.ny.gov), [oagltd@ag.ny.gov](mailto:oagltd@ag.ny.gov)

J. David Golub [DRJDG1@comcast.net](mailto:DRJDG1@comcast.net)

1:16-cv-05386-RRM-LB Notice will not be electronically mailed to:

The following document(s) are associated with this transaction:

Document description:

Original filename:

Electronic document Stamp:

[STAMP NYEDStamp\_ID=875559751 [Date=9/27/2018] [FileNumber=13213085-0]  
[b79a7209323c1d797356841cfd2d689e08015e1d2ab041c521b08356864692647e9a  
1a365d385d5b37378c3890b4bfac7fe5bbe257fb0a650ac18acbdb2e71e3]]

Main Document n/a

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- FILED SIGNED COPY 10.4.18.pdf (7 MB)



**FILED**  
IN CLERK'S OFFICE  
US DISTRICT COURT E.D.N.Y.  
★ OCT 09 2018 ★  
**BROOKLYN OFFICE**

Dr. J. David Golub  
P.O. Box 131721  
Staten Island, N.Y. 10313  
(973) 454-0677 (cell)

OCTOBER 4, 2018

Via U.S. First Class mail

Mr. Ralph Vega, Clerk of the Court  
Pro Se Office - Room 118 South  
United States District Court - Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201  
(718) 613-2665

CASE: USDC-EDNY DOCKET NO.16 CV 05386 (RR Mauskopf)  
DR. J.D. Golub v. Swaaley, Stern, N.Golub, Gigante, et.al.  
NYSAD Docket No. 2013-01013/14 and 2013-09415/16  
Richmond County Sur. Ct No. 2009-505/505A (Judge Gigante)  
NYS Bar Association File No: R-423-14 and R-1061-16(R-423-14)

Dear Mr. Vega:

Please submit and docket this letter with the enclosed attachments, dated October 4, 2018, to Judge Mauskopf, with a copy to Magistrate Judge Bloom entitled:

For meritorious and just cause, Judicial notice to file and reinstate the *unopposed* Fed. R. Civ. Proc. Rule 59/60 motion (with the amended complaint) on or before October 25, 2018 (within 28 days of the decision entered on September 27, 2018), accompanied by a sworn affidavit in support of the following motions: 1) Fed. R. Civ. Proc. Rule 12(c) and 12(d) motion for judgment on the pleadings; 2) Fed. R. Civ. Proc. Rule 55 default judgment, and 3) Fed. R. Civ. Proc. Rule 56 motion for summary judgment.

I have enclosed proof of legal service via e-mail, or facsimile on defendants, with a courtesy copy faxed to the attention of Associate Deputy Clerk of the Court, Mr. Darrell Joseph, Esq., NYS Supreme Court, Appellate Division- 2<sup>nd</sup> Dept., Brooklyn, New York 11201.

SIGNED,



DR. J. D. GOLUB, ATTORNEY PRO SE  
P.O. BOX 131721  
STATEN ISLAND, N.Y. 10313  
(973) 454-0677 DRJDG1@COMCAST.NET

DR. J. D. GOLUB

P.O. Box 131721

Staten Island, N.Y.

10313

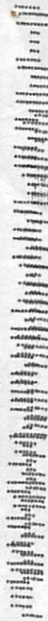
USMS



MR. RALPH VEGA  
CLERK OF THE COURT  
Pro Se Office - Room 118 fourth  
United States District Court  
Eastern District of New York  
225 Cadogan Plaza East  
Brooklyn, New York 11201

1120181832 0000

10/10/18



NEW YORK NY 100

05 OCT 2018 PM 7:1